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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BELLA G., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CRYSTAL F.,

Defendant and Appellant.

D061212

(Super. Ct. No. SJ12618D)

APPEAL from a judgment of the Superior Court of San Diego County, Garry G.  
Haehnle, Judge. Affirmed.

Crystal F. appeals following the jurisdictional and dispositional hearing in the dependency case of her daughter, Bella G. Crystal contends substantial evidence does not support the juvenile court's order removing Bella from her custody. We affirm.

BACKGROUND

In July 2002, when Crystal was 17 years old, she began receiving voluntary services in Los Angeles County for her first child, infant V.F. In February 2003, while the voluntary case was open, Crystal became involved in a fight, punched someone and

was taken to juvenile hall. V.F. was detained in a foster home. In September, there was a substantiated report that Crystal allowed V.F. to play in or near the street, and when a neighbor intervened, Crystal made threatening gestures, used profanity and said she could do anything she wanted with her child. Crystal had been observed hitting V.F. and using profanity to her. The voluntary case closed in January 2004.

A new voluntary case for V.F. opened in June 2008, and Crystal's child J.G. was added to the case when she was born a month later. The voluntary case closed in February 2009.

In May 2011 there was a substantiated report in San Diego County that Crystal was neglecting nine-year-old V.F., two-year-old J.G. and Crystal's third child, one-year-old M.G. Crystal allowed a woman she did not know watch the children while she applied for aid. Crystal was homeless and had a history of drug use. She admitted she had a history of domestic violence with Miguel G., the father of J.G. and M.G. Crystal said that in May 2010, Miguel cut her with an ice pick, leaving a scar on her forehead. On another occasion, he burned her.

In June 2011 officials of a social services agency in Mexico found V.F., J.G. and M.G. living in a trailer with feces on the floor and no bathroom, running water, food, refrigerator, stove or electricity. Crystal abused drugs and brought various men into the home. Mexican authorities removed the children and placed them in a shelter. Crystal could not be located and did not visit the children in the shelter. In July the children were returned to the United States. The children were in Polinsky Children's Center for three weeks, and Crystal visited them only once. She admitted she had moved to Mexico to be with Miguel after he was deported, even though he had not completed domestic violence

treatment, and there was another incident of domestic violence in Mexico. Crystal left the children with Miguel during the week when she stayed in the United States in order to qualify for public assistance, and V.F. reported Miguel sexually abused her while Crystal was away.

Crystal received services in the dependency cases of V.F., J.G. and M.G. Crystal missed two drug tests in July 2011 and two in August. She smoked marijuana a few days before her admission to the KIVA residential drug program in August. Within a week of entering KIVA, Crystal threatened to leave the program unless she was allowed a visit with her children.

Around the time of Bella's birth in September 2011, Crystal disclosed she had been using methamphetamine for the past five years and during her pregnancy. Crystal last used methamphetamine in July 2011. She admitted she had received no prenatal care until August, but later suggested she had received prenatal care earlier. Crystal acknowledged she had sold drugs to support her habit, and said she had discontinued drug use during the last few months of her earlier pregnancies to avoid positive toxicologies when giving birth. A few days after Bella's birth, Crystal violated KIVA's rules by sneaking a cell phone into the facility.

In September 2011 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for newborn Bella. (Welf. & Inst. Code, § 300, subd. (b); all statutory references are to this code.) The petition alleged Crystal used methamphetamine and marijuana for the past five years and during her pregnancy. She admitted using drugs in July and August, and failed to drug test twice in July and twice in August because she knew the tests would be positive. Crystal's other children were

removed from her care in June because they were living in deplorable conditions and Crystal was using drugs.

Bella was detained in the hospital and then in a foster home. On October 31, 2011, the court sustained the petition.

At the November 10, 2011, dispositional hearing, the court found Crystal had no insight into why she abused drugs, entered into and stayed in a relationship with Miguel, tolerated domestic violence, tolerated the deplorable conditions of her trailer, left her older children with a stranger and exposed Bella to drugs in utero. The court stated Crystal needed therapy to gain insight, and until then Bella would not be safe in Crystal's care. The court ordered Bella removed from Crystal's custody (§ 361, subd. (c)) and placed in a foster home.

## DISCUSSION

At the dispositional hearing, the court was required to return Bella to Crystal unless the Agency proved, by clear and convincing evidence, "[t]here is or would be a substantial danger to [Bella's] physical health, safety, protection, or physical or emotional well-being" and there were no reasonable alternative means of protecting her physical health. (§ 361, subd. (c)(1).) "The . . . minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, citations omitted, disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The court was entitled to consider Crystal's past conduct and current situation and gauge whether she had progressed sufficiently to eliminate any risk. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.)

On appeal, Crystal has the burden of showing there is no substantial evidence justifying removal. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1135; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.) We give "full effect to the respondent's evidence, however slight, and disregard[] the appellant's evidence, however strong." (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881, quoted in *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

The instant appeal borders on frivolous; the evidence overwhelmingly supports the removal order. Crystal had a long history of making poor choices, and continued making poor choices after receiving services in two voluntary cases for her older children. Crystal stayed in a violent relationship with Miguel. She allowed him to care for her older children for extended periods. She exposed those children to deplorable living conditions and one of them to sexual abuse. She left the older children with a stranger while she applied for aid. Crystal used drugs, including while pregnant with Bella, and sold drugs to support her habit. At the time of the dispositional hearing, Crystal's three older children were in foster care.

Crystal was in the beginning stages of recovery and treatment. She had been in KIVA for less than two months. She was doing well, but was only on the first step of a 12-step program. She had been sober for just 84 days after five years of methamphetamine use. She had been sober for longer periods during her pregnancies with J.G. and M.G. and then resumed drug abuse.

At KIVA, Crystal participated in substance abuse counseling and parenting education and attended Narcotic Anonymous meetings. She had completed only about four weeks of a 32- or 34-week domestic violence program. She had not begun individual therapy.

Crystal had no support system in San Diego other than KIVA. Although KIVA was a structured environment, there was nothing to prevent Crystal from leaving the facility, as she had done when she smuggled the cell phone, and as she had threatened to do a short time after entering KIVA. Although Crystal testified she had not had contact with Miguel for seven months, and was not currently in a relationship, in the past she had returned to Miguel. Bella was an infant and completely reliant on her caregivers.

#### DISPOSITION

The judgment is affirmed.

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McINTYRE, Acting P. J.

WE CONCUR:

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O'ROURKE, J.

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AARON, J.